

Attorney Docket No.: F3324(V)
Serial No.: 10/537,600
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REMARKS

Election/Restriction

Applicants confirm the election of the Group I invention encompassing claims 1-18 and new claim 20. Claim 19 is withdrawn.

Amendment to the claims

Independent claim 1, has been amended without prejudice to recite preferred embodiments of applicants' invention that are more clearly differentiated from the prior art .

Amended claim 1 now includes the following limitations:

- The frozen product comprises a frozen uncooked cereal dough that wraps around and completely seals a filling as disclosed on page 9, lines 17-18 and 8 in Fig 1;
- At least 60% of the area of an upper surface of the cereal dough contacts the internal surface of the package when the cereal dough is cooked as disclosed in previous claim 2 and page 5, lines 1-3.

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- The package in contact with the upper surface of the cereal dough contains susceptor materials which causes browning and/or crisping of said upper dough surface during microwave cooking as disclosed in Example 1-3 (especially page 11, lines 19-20 and 25-29), page 9 line 29 to page 10, line 2 .

Claim 2 has been cancelled without prejudice and its limitations incorporated in claim 1.

Claim 6 was amended to correct informalities in Markush group nomenclature.

Claim 9 was amended to change its dependency from claim 6 to claim 8.

Claim 12 was amended without prejudice to specify that all of said interior surface of the package comprises the susceptor material (the words "the" and "substantially" were deleted) as disclosed in examples 1-3 – pages 10-15.

Claim 15 has been amended to correct a typographical error and to more clearly define applicants' invention. Specifically, the word "east" has been replaced by "yeast" and the amended claim now specify that the cereal dough is proven before or after freezing as disclosed on page 8, lines 26-28.

Claim 20 is new and specifies that when the cereal dough recited in claim 1 is cooked by microwave heating the cereal dough expands to occupy all the free volume within the package as disclosed at page 9, lines 28-29.

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Objections to the Claims

Claims 6, 9, and 15 were objected to for informalities. Applicants assume that the amendments to claims 6, 9 and 15 as suggested by the Examiner fully correct these informalities and that the claims are now acceptable.

Claim Rejections – 35 USC § 112

Claim 12 and 15 were rejected under 35 USC §112, second paragraph, as being indefinite.

Claim 12 has been amended to remove the phrase "the substantially" and thus the claim recites that the entire interior surface of the package comprises the susceptor material. Applicants submit that the metes and bounds of amended claim 12 are clear and definite.

Claim 15 has been amended to specify that the cereal dough is proven "before or after freezing". Applicants submit that the metes and bounds of amended claim 15 are clear and definite.

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Claim Rejections – 35 USC § 102

Claim 1-9 and 11-16 were rejected under 35 USC 102(b) as being anticipated by Mast (US Patent No. 6,054,698). Applicants respectfully request the Examiner's reconsideration in view of the above amendments and following remarks.

Relevant Facts

Mast discloses a microwave cooking system that utilizes a microwaveable tray comprising a microwave susceptor material laminated to a thin paperboard sheet for supporting and heating a food product to be cooked thereon. (Abstract)

Mast further discloses that the tray containing the food product thereon is sealed in a polymer bag having microwave shielding material on the inner surface of the upper side of the sealed polymer bag for minimizing the amount of direct microwave transmission contacting the food product contained therein. During cooking, the food product contained in the microwave cooking system is cooked in a high pressure, high heat environment through a combination of conduction, convection and microwave excitation cooking. (abstract also Fig 2, **50, 80** [emphasis added])

Mast teaches that a key feature of the system is that the presence of the hot, high pressure vapors inside the sealed polymer bag **50** aids in cooking the food item **200** more evenly and more quickly as the food item **200** is bathed in the steam and as the steam penetrates back into the food (column 8, lines 19-22).

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Mast is silent regarding food products that comprise a frozen uncooked cereal dough that wraps around and completely seals a filling.

Mast is silent regarding any contact between the upper surface of a cereal dough and the internal surface of the package when the cereal dough is cooked.

Mast is silent regarding a package which contains resceptor material in its upper surface. In fact, Mast specifically teaches that the package has microwave shielding material on the inner surface of the upper side (abstract and column 2, lines 37-41).

In contrast, applicants claims are directed to a food product for microwave cooking which comprising a frozen uncooked cereal dough that wraps around and completely seals a filling. The filled cereal dough is contained in a sealed package which remains sealed during microwave cooking and is dimensioned such that there is free volume within the package defined by the internal surface of the package. When the cereal dough is cooked by microwave heating the cereal dough expands and contacts areas the internal surface of the package so that the shape of the cooked cereal dough is defined, at least in part, by contact areas. The package includes susceptor material in at least some of the contact areas to cause browning and/or crisping of the cereal dough during microwave cooking. At least 60% of the area of an upper surface of the filled cereal dough contacts the internal surface of the package when the cereal dough is cooked and the package in contact with the upper surface of the cereal dough contains susceptor materials which cause browning and/or crisping of the upper dough surface during microwave cooking.

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Applicants Arguments

MPEP 706.02 states

"...for anticipation under 35 U.S.C. 102, the reference must teach every aspect of the claimed invention either explicitly or impliedly. Any feature not directly taught must be inherently present."

Applicants' respectfully submit that Mast does not disclose either explicitly or implicitly the following aspects of the invention recited in amended claim 1.

- An uncooked cereal dough that wraps around and completely seals a filling. Mast teaches a pizza dough comprising toppings such as cheese and tomato. However, in this embodiment the pizza dough does not completely surround and seal the filling.

- At least 60% of the area of an upper surface of the cereal dough contacts the internal surface of the package when the cereal dough is cooked. Mast teaches that a key feature of the system is the presence of the hot, high pressure vapors inside the sealed polymer bag **50** which aids in cooking the food item **200** more evenly and more quickly as the food item **200** is bathed in the steam and as the steam penetrates back into the food. (column 8, lines 19-22). Thus, the Mast system essentially requires a head space occupied by hot vapor over the food product and not extensive contact of the dough with the upper surface of the package during cooking.

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- The package in contact with the upper surface of the cereal dough contains susceptor materials which causes browning and/or crisping of its surface during microwave cooking. This is completely opposite to what is taught by Mast. Mast specifically teaches that the package has microwave shielding material on the inner surface of the upper side of the package, i.e. microwave shielding materials reflect microwave radiation whereas microwave susceptor materials absorb microwave radiation.

Absent a disclosure of the elements discussed above (*dough completely sealing filling, at least 60% of the area of an upper surface of the cereal dough contacts internal surface of package, and package in contact with the upper surface of the cereal dough contains susceptor materials which causes browning and or crisping*) Mast can not anticipate applicants' claimed invention.

Claim Rejections – 35 USC § 103

The MPEP specifies that

To qualify as a 103(a) reference "The prior art reference, or combination of references, must teach or suggest all of the claim limitations (MPEP §2143). In addition to providing at least a suggestion of all the claim limitations, both the suggestion and the reasonable expectation of success must be found in the prior art references, not in Appellant's disclosure" (See In re Vaeck, 20 U.S.P.Q.2d 1438, 947 F.2d 448 (Fed Cir. 1991).

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Claims 5-7, 17 and 18 were rejected under 35 USC §103(a) as being unpatentable over Mast (US Patent No. 6,054,698) in view of Goedeken (USPA 2003/0152667) . Applicants respectfully request that the Examiner reconsiders the 103(a) rejection in view of the above amendments and following remarks.

Relevant Facts

Mast and applicants invention have already been discussed in connection with the rejection under §102(b) .

Goedeken discloses a dough composition comprising propylene glycol alginate in an amount of 0.005 to 0.2% by weight of the total dough composition. Baked dough products according to the invention are springy in texture.

Goedeken discloses a filling may lie on top of the dough portion of the product, or may be partially or fully enrobed in the dough portion of the product [0038].

Goedeken discloses that the cereal dough can comprise yeast and can be stored in the frozen state either as proofed dough or unproofed dough.

Goedeken discloses that while baking is a preferred method of cooking any cooking technique appropriate for the category of dough product to be prepared may be used. For example, dough products the present invention may be cooked by frying,

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steaming, microwave cooking, conductive baking, heating by infrared radiation or any other appropriate cooking method. [0015]

Goedeken is silent with regard to any type of packaging system for cooking.

Applicants Arguments

Applicants first submit that the combination of Mast and Goedenken does not teach or suggest all the claim limitations recited in claims 5-7, 17 and 18 because the combination of references does not disclose all the limitations recited in amended claim 1. Specifically, the combination of references does not disclose the following limitations:

At least 60% of the area of an upper surface of the cereal dough contacts the internal surface of the package when the cereal dough is cooked. As discussed above, the Mast system essentially requires a head space occupied by hot vapor over the food product and not extensive contact of the dough contacts with the upper surface of the package during cooking.

- The package in contact with the upper surface of the cereal dough contains susceptor materials which causes browning and/or crisping of its surface during microwave cooking. This is completely opposite to what is taught by Mast.

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Absent a disclosure of the elements discussed above (*at least 60% of the area of an upper surface of the cereal dough contacts internal surface of package, and package in contact with the upper surface of the cereal dough contains susceptor materials*) the combination of Mast and Goedeken does not present a *prima facie* case of obviousness.

Applicants' further submit that a person having ordinary skill in the art at the time the invention was made would not have been motivated to modify the combined teachings of Mast and Goedeken to arrive at applicants invention.

To modify Mast and Goedeken, the artisan would have had to ensure that the food composition and package were such that at least 60% the upper surface dough package of Mast comes in contact with the upper surface of the package and replace the microwave shielding material on the inner surface of the upper side of the Mast package with susceptor materials against the teachings of Mast.

Applicants' submit that the artisan would have recognized that both of these changes would have been directly opposed to the explicit and implied teachings of Mast which specifically requires that the upper surface must have microwave shielding and that there needs to be a head space over the food to allow hot, high pressure vapors inside the sealed polymer bag to aid in cooking the food item.

In fact, applicants submit that the modifications that would have been required to arrive at applicants invention would have made the device unsuitable for a key intended purpose of the Mast invention which is the microwave cooking of pizza. The topping of

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a pizza cooked in such a device would have contacted the top surface causing the cheese and sauce to burn and stick to the package.

Thus, the reference would not have provided a suggestion of all the claim elements or a reasonable expectation of success and in fact teaches away from applicants' invention.

Claim 2, 20 and 12 are even further removed from the combination of Mast and Goedecken because they recite additional limitations not found in these references (*upper surface in contact with at least 80% of package, dough expands to fill substantially all the free volume and entire interior surface of packaging film comprises receptor material*).

Claim 10 was rejected under 35 USC §103(a) as being unpatentable over Mast (US Patent No. 6,054,698) in view of Brown (US Patent No. 4,626,641) .
Applicants respectfully request that the Examiner reconsiders the 103(a) rejection in view of the above amendments and following remarks.

Relevant Facts

Mast and applicants invention have been discussed above in connection with the §102(b) rejection.

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Brown discloses a container (2) including a paperboard carton (4) for uniformly heating and crisping the top crust of a large food product such as a pot pie having no side and bottom crusts in a microwave oven including a top panel (9) having crisping means (10) separated by a vertical distance of less than 2.7 centimeters from the top surface of the food product. The crisping means (10) consists of a microwave interactive layer for converting microwave energy received on the inner and outer surfaces of the layer into radiant heat for browning and crisping the top surface of the food product. Crisping means (10) also reflects heat radiated by the top surface of the food product back onto that surface for additional browning and crisping. (abstract – emphasis added)

Applicants' Argument

Applicants' first submit that the combination of Mast and Brown does not teach or suggest all the claim limitations recited in claim 10 as required under §103(a) because the combination of references does not disclose all the limitations recited in amended claim 1. Specifically, the combination of references does not disclose the following limitations:

- A frozen uncooked cereal dough that wraps around and completely seals a filling. Mast is silent regarding such food products and Brown specifically teaches that the food product has no side or bottom crusts.

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- At least 60% of the area of an upper surface of the cereal dough contacts the internal surface of the package when the cereal dough is cooked. The Mast system essentially requires a head space to be maintained over the food during cooking which is occupied by hot vapor and not predominant contact of the upper surface of the dough with the internal surface of the package.

Brown specifically teaches that crisping means (10) is separated by a vertical distance "a" from the top surface of the food product as shown in Fig. 1. (See also column 3, lines 50-60).

- The package in contact with the upper surface of the cereal dough contains susceptor materials capable of browning and/or crisping its surface. As discussed above this is completely opposite to what is taught by Mast.

Although Brown teaches that that the upper surface of the box includes microwave susceptor materials there is no contact region because according to Brown the inner surface of the top of the package must be separated from the top surface of the food product.

Absent a disclosure of the elements discussed above (dough surrounds and completely seal filling, at least 60% of the area of an upper surface of the cereal dough contacts internal surface of package, and package in contact with the upper surface of the cereal dough contains susceptor materials) the combination of Mast and Brown does not present a prima facie case of obviousness.

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Applicants' further submit that a person having ordinary skill in the art at the time the invention was made would not have been motivated to modify the combined teachings of Mast and Brown to arrive at applicants' invention.

To modify Mast and Brown, the artisan would have had to ensure that the food product is a dough which completely surrounds a filling; ensure that the composition and package were such that at least 60% the upper surface dough package comes into contact with the upper surface of the package; replace the microwave shielding material on the inner surface of the upper side of the Mast package with susceptor materials such as described in Brown.

Applicants' submit that the artisan would have recognized that all these modifications would have been against the teaching of both Mast and Brown and would have made the Mast and Brown inventions inoperative for either of their intended purposes.

Thus, the reference would not have provided a suggestion of all the claim elements or a reasonable expectation of success and in fact would have taught away from applicants' invention.

Claim 12 was rejected under 35 USC §103(a) as being unpatentable over Mast (US Patent No. 6,054,698) in view of Fazorayer (Application No. JP2215337

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A). Applicants respectfully request that the Examiner reconsiders the 103(a) rejection in view of the above amendments and following remarks.

Relevant Facts

Mast and applicants' invention have been discussed above in connection with the §102(b) rejection.

Fazorayer discloses "a method for baking bakery products comprising:
a step of placing a minimum of one kind of bakery product in a dough form, which may optionally have been incompletely baked, inside a molded package that is not flat at the upper section, the upper section containing in a minimum of a part thereof, a substance that can absorb microwave radiation and convert it into heat and having such a shape that the generated heat can be led substantially downward, that is toward the top of the dough, directly or by reflection and ,furthermore, the interior surface of the upper section being separated from the top and side surfaces of the dough by a predetermined minimum distance prior to and during the dough baking-operation cycle, and

a step of placing a minimum of one kind of bakery product thus packaged in a microwave rotation medium and simultaneously baking and browning it. (English translation provided by Examiner – Page 2, Claim 1 – Emphasis added)

Fazorayer is silent regarding food products that comprise a frozen uncooked cereal dough that wraps around and completely seals a filling.

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Applicants' Argument

Applicants' first submit that the combination of Mast and Fazorayer does not teach or suggest all the claim limitations recited in claim 12 because the combination of references does not disclose all the limitations recited in claim 1. Specifically, the combination of references does not disclose the following limitations:

- A frozen uncooked cereal dough that wraps around and completely seals a filling. Both Mast and Fazorayer are silent regarding such food products.

- At least 60% of the area of an upper surface of the cereal dough contacts the internal surface of the package when the cereal dough is cooked. The Mast system essentially requires a head space over the food during cooking which is occupied by hot vapor and not predominant contact of the upper surface of the dough with the internal surface of the package.

Fazorayer specifically teaches that the interior surface of the upper section must be separated from the top and side surfaces of the dough by a predetermined minimum distance prior to and during the dough baking-operation cycle (English translation Page 2, claim 1, page 11 first paragraph and page 13 last paragraph continuing to page 14.

- The package in contact with the upper surface of the cereal dough contains susceptor materials capable of browning and/or crisping its surface. As discussed above this is completely opposite to what is taught by Mast.

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Although Fazorayer teaches that that the upper surface of the molded package includes microwave susceptor materials there must not be contact region because according to Fazorayer the inner surface of the top of the package must be separated from the top surface of the food product during cooking.

Absent a disclosure of the elements discussed above (*frozen dough surrounds and completely seal filling, at least 60% of the area of an upper surface of the cereal dough contacts internal surface of package, and package in contact with the upper surface of the cereal dough contains susceptor materials*) the combination of Mast and Fazorayern does not present a *prima facie* case of obviousness.

Applicants' further submit that a person having ordinary skill in the art at the time the invention was made would not have been motivated to modify the combined teachings of Mast and Fazorayer to arrive at applicants invention.

To modify Mast, the artisan would have had to ensure that food product is a dough which completely surrounds a filling, modify the composition and package to ensure that at least 60% the upper surface dough package of Mast comes in contact with the upper surface of the package, replace the microwave shielding material on the inner surface of the upper side of the Mast package with susceptor materials as taught by Fazoreayer, but ignore the teaching of Fazorayer that the upper surface of the dough should not touch the inside of the package.

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Applicants' submit that the artisan would have recognized that all of these modifications, which would have been against the teaching of both Mast and Fazorayer, would have made the Mast and Fazorayer inventions inoperative for their intended purposes (i.e., the modified invention would have been outside the scope of the claims).

Thus, the references would not have provided a suggestion of all the claim elements or reasonable expectations of success and in fact would have taught away from applicants' invention.

Claim 15 and 17 were rejected under 35 USC §103(a) as being unpatentable over Mast (US Patent No. 6,054,698) in view of Paulucci (Us Patent No. 6,168,812).

Applicants respectfully request that the Examiner reconsiders the 103(a) rejection in view of the above amendments and following remarks.

Relevant Facts

Mast and applicants' invention have been discussed above.

Paulucci discloses a microwavable pizza product and a package combination that includes a pizza crust having a semi-circular shape and a pizza topping is deposited on top of the crust. The topped pizza crust is packaged with a microwave susceptor member under the bottom of the crust, and a support member under the susceptor member. A plastic film encloses the pizza product, susceptor member and support member, and the entire package is enclosed in a carton.

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Paulucci was relied upon by the Examiner for teaching that the pizza dough is comprised of active yeast; that after mixing the dough is discharged onto an incline conveyor belt and conveyed slowly for 45 minutes to 1 hour which provides a "resting" or "proofing" stage which allows the yeast in the dough to activate and cause the dough to rise; and for teaching that the pizza product is baked or partially baked before being frozen (Page 14, paragraph 56 of Office Action).

Applicants Arguments

Applicants' first submit that the combination of Mast and Paulucci does not teach or suggest all the claim limitations recited in claims 15 and 17 because the combination of references does not disclose all the limitations recited in amended claim 1. Specifically, the combination of references does not disclose the following limitations:

- A frozen uncooked cereal dough that wraps around and completely seals a filling.

Both Mast and Paulucci are silent regarding such food products.

- At least 60% of the area of an upper surface of the cereal dough contacts the internal surface of the package when the cereal dough is cooked. The Mast system essentially requires a head space to be maintained over the food during cooking which is occupied by hot vapor and not predominant contact of the upper surface of the dough with the internal surface of the package.

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Paulucci specifically teaches that a microwave susceptor member is located under the bottom of the crust and that the plastic film **90** is either removed by the consumer before reheating the pizza or alternatively, the plastic film **90** may be vented to release steam and allowed to remain over the pizza product **85** during reheating in a microwave oven. Paulucci further teaches that in some cases, this configuration may allow more rapid heating of the topping materials due to the accumulation of steam and heat beneath the plastic. (column 7, lines 40-47). Thus, like the Mast package, the Paulucci package requires a head space to be maintained when the pizza product is reheated when the plastic film is allowed to remain in place.

- The package in contact with the upper surface of the cereal dough contains susceptor materials capable of browning and/or crisping its surface. This limitation is completely opposite to what is disclosed by Mast and Paulucci.

Absent a disclosure of the elements discussed above (*dough surrounds and completely seal filling, at least 60% of the area of an upper surface of the cereal dough contacts internal surface of package, and package in contact with the upper surface of the cereal dough contains susceptor materials*) the combination of Mast and Paulucci does not present a *prima facie* case of obviousness.

In light of the above amendments and remarks, applicants respectfully request that the amended claims be allowed to issue.

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If a telephone conversation would be of assistance in advancing prosecution of the subject application, applicants' undersigned agent invites the Examiner to telephone him at the number provided.

Respectfully submitted,

A handwritten signature in black ink, reading "Michael P. Aronson", written over a horizontal line.

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